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CALIFORNIA ALLIANCE OF CHILD AND FAMILY  
12 SERVICES

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

17 CALIFORNIA ALLIANCE OF CHILD AND  
FAMILY SERVICES,

18 Plaintiff,

19 v.

20 JOHN WAGNER, Director of the California  
Department of Social Services, in his official  
21 capacity; GREGORY ROSE, Deputy Director of  
the Children and Family Services Division of the  
22 California Department of Social Services, in his  
official capacity,

23 Defendants.  
24

Case No. CV 09-04398 (MHP)

**[PROPOSED] ORDER GRANTING  
PLAINTIFF CALIFORNIA  
ALLIANCE OF CHILD AND  
FAMILY SERVICES' MOTION FOR  
PRELIMINARY INJUNCTION**

Date: November 13, 2009

Complaint filed: September 18, 2009

1 On November 4, 2009, the Court issued a Temporary Restraining Order and Order to  
 2 Show Cause Regarding Preliminary Injunction. *See* Docket No. 45. On November 13, 2009,  
 3 this Court held a hearing on Plaintiff California Alliance of Child and Family Services’  
 4 (“Plaintiff”) Motion for a Preliminary Injunction. Upon consideration of the papers and evidence  
 5 submitted by the parties and the arguments of counsel at the hearing, and good cause appearing,  
 6 the court makes the following findings and enters this order.

7 “The decision of whether to grant or deny a motion for preliminary injunction is a matter  
 8 of the district court’s discretion.” *Brantley v. Maxwell-Jolly*, No. C 09-3798 SBA, --- F. Supp.  
 9 2d ----, 2009 WL 2941519, at \*6 (N.D. Cal. Sept. 10, 2009) (citing *Am. Trucking Ass’ns v. City*  
 10 *of L .A.*, 559 F.3d 1046, 1052 (9th Cir. 2009)). “A plaintiff seeking a preliminary injunction  
 11 must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable  
 12 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an  
 13 injunction is in the public interest.” *Winter v. Natural Res. Def. Council*, --- U.S. ----, 129 S. Ct.  
 14 365, 374 (2008); *see also Am. Trucking Ass’ns v. City of L .A.*, 559 F.3d 1046, 1052 (9th Cir.  
 15 2009). “In each case, courts ‘must balance the competing claims of injury and must consider the  
 16 effect on each party of the granting or withholding of the requested relief.’” *Winter*, 129 S. Ct. at  
 17 376 (quoting *Amoco Prod. Co. v. Vill. of Gambell, Alaska*, 480 U.S. 531, 542 (1987)). The  
 18 Court finds that Plaintiff has satisfied this standard and hereby **GRANTS** its Motion for  
 19 Preliminary Injunction.

20 1. The Court finds that Plaintiff is likely to succeed on the merits of this action. The  
 21 federal Child Welfare Act (the “Act”) provides that “Each State with a plan approved under this  
 22 part *shall* make foster care maintenance payments on behalf of each child who has been removed  
 23 from the home of a relative . . . .” 42 U.S.C. § 672(a)(1) (emphasis added). The Act defines  
 24 “foster care maintenance payments” as “payments to cover the cost of (and the cost of  
 25 providing)” certain items enumerated in the Act, including food, clothing, shelter and  
 26 supervision. 42 U.S.C. § 675(4)(A). Plaintiff represents California non-profit agencies offering  
 27 services to vulnerable children and their families, including group home programs. Group homes  
 28 provide care and supervision for foster children who are placed with them by county child

1 welfare and probation departments and who often have significant emotional or behavioral  
2 problems. *See* Docket No. 1 (Complaint) ¶ 4. Approximately two years ago, plaintiff brought a  
3 challenge to the level of funding provided by the State of California to support foster care  
4 maintenance payments to group homes. At that time, this court found that California's Rate  
5 Classification Level (RCL) system provided for at least 80% of the costs of the items enumerated  
6 by the Act. *California Alliance of Child & Family Servs. v. Allenby*, 2008 WL 686860, at \*4  
7 (N.D. Cal. Mar. 12, 2008) (Patel, J.). While finding said funding level to be substantially  
8 compliant with the Act, the court warned that the California system may well be in violation of  
9 federal law without further funding increases over time. *Id.* at \*6. The implementation of the ten  
10 percent reduction provided in California's Budget Act of 2009, coupled with the cumulative  
11 effect of uncompensated cost of living increases, would reduce foster care maintenance  
12 payments to a level covering only 68-70% of the costs of the items enumerated by the Act. *See*  
13 Docket No. 41 (Def.'s Supp. Dec.) ¶ 8. Defendants' contention that the effects of the budget cut  
14 are offset by the provision of Senate Bill 597 that adjusted the respective RCL point ranges has  
15 no merit: this adjustment appears to help a group home's financial posture by allowing the group  
16 home to cut "costs," i.e., the services provided to each child, without losing additional funding.  
17 The concern of the Act is the actual provision of foster care to children, not simply the balance  
18 sheets of the service provider. There are serious questions whether California's funding scheme  
19 for 2009-10 substantially complies with the Act, and therefore the Court hereby finds that  
20 Plaintiff is likely to succeed on the merits.

21         2. Plaintiff has demonstrated that the balance of hardships tips sharply in its favor  
22 and that the entry of a preliminary injunction is in the public interest. The implementation of  
23 California's ten percent budget cut may be expected to result in decreases in care, housing,  
24 services, staffing numbers and staff qualifications. Group homes that begin to restructure their  
25 respective staffing complements in response to the reduction may find it difficult to reestablish  
26 the *status quo ante* should Plaintiff succeed on the merits, unless a preliminary injunction issues  
27 forthwith. The entry of a preliminary injunction imposes a fiscal impact on the State, which is  
28 navigating a severe budgetary crisis, *see* Docket No. 36 (Def.'s RJN); however, this temporary

1 hardship does not outweigh the irreparable injury likely to be sustained by the foster children  
 2 living in group homes that may have already begun terminating staff and cutting services. *See*  
 3 *Golden Gate Restaurant Ass'n v. City & County of San Francisco*, 512 F.3d 1112, 1126 (9th Cir.  
 4 2008) (“While the City’s and Association’s injuries are entirely economic, the Intervenor’s  
 5 injuries include preventable human suffering. Therefore, the balance of hardships tips sharply in  
 6 favor of the parties seeking relief.”); *V. L. v. Wagner*, No. C 09-04668 CW, 2009 WL 3486708,  
 7 at \*1 (N.D. Cal. Oct. 23, 2009) (“[T]he increase in more expensive hospitalization and  
 8 institutionalization of needy disabled and elderly people will likely outweigh the short-term  
 9 savings.”) Moreover, the public interest weighs in favor of ensuring that decisions directly  
 10 affecting this particularly vulnerable segment of society scrupulously adhere to the law’s  
 11 requirements. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).

12 3. Accordingly, Motion for Preliminary Injunction is **GRANTED**.

13 4. Defendants John Wagner and Gregory Rose, and their successors, agents, officers,  
 14 servants, employees, attorneys and representatives, and all persons acting in concert or  
 15 participating with defendants in their respective official capacities as Director of the California  
 16 Department of Social Services and Deputy Director of the Children and Family Services  
 17 Division of the California Department of Social Services, are **HEREBY ENJOINED AND**  
 18 **PROHIBITED** from implementing the ten percent reduction in the standardized schedule of  
 19 rates for each RCL provided at California Welfare and Institutions Code § 11462(g)(5), such  
 20 reduction having been approved in Assembly Bill ABX 4 4, filed with the Secretary of State on  
 21 July 28, 2009, and Senate Bill 597, filed with the Secretary of State on October 11, 2009, as part  
 22 of the Budget Act of 2009.

23  
 24  
 25 DATED: \_\_\_\_\_

\_\_\_\_\_  
 THE HON. MARILYN HALL PATEL  
 United States District Court Judge  
 Northern District of California